

**DEPARTMENT OF ALCOHOLIC BEVERAGE CONTROL  
DISCIPLINARY ACTIONS – PENALTIES**

Add new section to Title 4, California Code of Regulations, Division 1, Article 22, Section 144: “Penalty Guidelines”

FINDING OF EMERGENCY

The Department of Alcoholic Beverage Control finds that the attached new section to be added to Title 4, California Code of Regulations is necessary for the immediate preservation of the public peace, health and safety, and the general welfare.

DESCRIPTION OF SPECIFIC FACTS SHOWING  
THE NEED FOR IMMEDIATE ACTION

The following facts provide the basis for the finding of emergency:

- (1) The Alcoholic Beverage Control Act is “an exercise of the police powers of the State for the protection of the safety, welfare, health, peace, and morals of the people of the State . . . [which] involves in the highest degree the economic, social, and moral well-being and the safety of the State and of all its people.” (Business and Professions Code Section 23001.)
- (2) The Department of Alcoholic Beverage Control “shall have the exclusive power . . . to license the manufacture, importation and sale of alcoholic beverages in this State. . . . The department shall have the power, in its discretion, to deny, suspend or revoke any specific alcoholic beverages license if it shall determine for good cause that the granting or continuance of such license would be contrary to the public welfare or morals, or that the person seeking or holding a license has violated any law prohibiting conduct involving moral turpitude.” (California Constitution, Article XX, Section 22.)
- (3) The Department maintains a “Penalty Policy Guidelines” in its Instructions, Interpretations, and Procedures Manual, page L225.
- (4) The Department’s “Penalty Policy Guidelines” have not been adopted as a regulation pursuant to Government Code Section 11340.5. The Alcoholic Beverage Control Appeals Board has held that the Department’s “Penalty Policy Guidelines” constitute an underground regulation in violation of this provision.

This emergency regulation will insure that the Department's disciplinary actions and imposition of penalties will be fair, reasoned and consistent throughout the State, and will promote the safety, welfare, health, peace, and morals of the people of the State.

### AUTHORITY AND REFERENCE CITATIONS

The Department adds Section 144 under the authority granted it in California Constitution, Article XX, Section 22, Business and Professions Code Sections 23001 and 25750, and Government Code Sections 11340.5, 11342.600 and 11425.50; the California Supreme Court's holding in *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557; and the ABC Appeals Board's ruling in *Vicary v. ABC*, AB-7606a (Nov. 12, 2003).

### INFORMATIVE DIGEST

California Code of Regulations, Title 4, Division 1, Section 144, "Penalty Guidelines."

#### 1. Add Section 144.

Section 144 incorporates by reference the Department's "Penalty Guidelines" dated December 17, 2003. The Department's prior "Penalty Policy Guidelines" were found to be an underground regulation in violation of the Administrative Procedures Act by the ABC Appeals Board. This proposes to codify the Department's penalty policy, procedures and guidelines to insure that disciplinary proceedings are conducted in a fair, reasoned and consistent manner, and in a manner authorized by law.

### Authority and Reference Citations

#### Section 144:

The Department of Alcoholic Beverage Control proposes to add Section 144 pursuant to California Constitution, Article XX, Section 22, Business and Professions Code Sections 23001 and 25750, and Government Code Sections 11340.5, 11342.600 and 11425.50; *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4<sup>th</sup> 557; and *Vicary v. ABC*, AB-7606a (Nov. 12, 2003).

### Fiscal Impact Estimates

Fiscal Impact on Public Agencies Including Costs of Savings to State Agencies or Costs/Savings in Federal Funding to the State: None.

Nondiscretionary Costs/Savings to Local Agencies: None.

Cost to Any Local Agency or School District for Which Government Code §17561 Requires Reimbursement: None.

### Local Mandate Statement

Addition of the above-mentioned section does not impose a mandate on local agencies.

### Business Impact Statement

The Department of Alcoholic Beverage Control has determined that the proposed regulatory action would have no significant adverse economic impact on California business enterprises and individuals, including the ability of California businesses to compete with businesses in other states.

### Impact on Jobs/New Businesses

The Department of Alcoholic Beverage Control finds that the proposed regulatory action will not have any impact on the creation or elimination of jobs or businesses or the expansion of businesses in the State of California.

### Statement of Potential Cost Impact on Private Persons or Entities

The Department of Alcoholic Beverage Control finds that the proposed regulatory action will not have any cost to private persons or entities.

### Statement of Effect on Small Businesses

The Department of Alcoholic Beverage Control finds that the proposed regulatory action will have no effect on small businesses since it merely codifies existing disciplinary procedures.

### Statement of Alternatives Considered

The Department of Alcoholic Beverage Control must determine whether any alternative considered by the Department would be more effective in carrying out the purpose for which repeal of the regulations are proposed or would be as effective and less burdensome to affected persons.